

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE

v.

FRANK POPE,

Defendant.

)
)
)
)
)
)
)
)
)
)

I.D. Nos. 1505018930
 1905012766

ORDER

Submitted: March 17, 2020¹

Decided: June 18, 2020

AND NOW TO WIT, this 18th day of June, 2020, upon consideration of Defendant Frank Pope's ("Defendant") Motion for Modification of Sentence, the sentence imposed upon the Defendant, and the record in this case, it appears to the Court that:

1. On January 21, 2016, Defendant pled guilty to Escape after Conviction² and was sentenced to a sum of six months a Level V followed by one year at Level

¹ The United States of America and the State of Delaware declared states of emergency due to COVID-19. As a result, per Administrative Directives of the Supreme Court of the State of Delaware and the Delaware Superior Court, and the national and local states of emergency, "[e]xcept as set forth in 10 *Del. C.* § 2007(c), deadlines in court rules or state or local statutes and ordinances applicable to the judiciary that expire between March 23, 2020 and June 13, 2020 are extended through July 1, 2020." Administrative Order No. 6 Extension of Judicial Emergency (Del. May. 14, 2020); *see also* Standing Order No. 6 Concerning COVID-19 Precautionary Measures (Del. Super. Ct. Apr. 15, 2020).

² *See* Jury Trial Calendar: Pled Guilty-Sentence, *State of Delaware v. Frank Pope*, Crim. ID No. 1505018930, D.I. 14 (Del. Super. Ct. Jan. 21, 2016).

III.³ On November 20, 2019, Defendant pled guilty to new charges of one count of Robbery 1st Degree and one count of Possession of a Deadly Weapon During the Commission of a Felony (“PDWDCF”),⁴ and was sentenced to a sum of six years at Level V followed by one year at Level III.⁵ As a result of his November 2019 convictions, Defendant was also found in violation of probation in regards to two previous charges⁶ and was resentenced to a sum of six months at Level IV Work Release with no probation to follow.⁷

2. On March 26, 2020, Defendant filed this letter.⁸ Defendant does not specifically cite to Superior Court Criminal Rule 35(b) in his motion. However, in

³ Defendant was sentenced to eight years at Level V, suspended after six months at Level V, for one year at Level III. *See* Sentence: ASOP Order Signed & Filed on 1/26/16, *State of Delaware v. Frank Pope*, Crim. ID No. 1505018930, D.I. 15 (Del. Super. Ct. Jan. 21, 2016). Defendant’s probation was sentenced to run concurrent to any Level III probation. *Id.*

⁴ *See* Guilty Plea Form Filed – Pled Guilty, Sentenced, *State of Delaware v. Frank Pope*, Crim. ID No. 1905012766, D.I. 17 (Del. Super. Ct. Nov. 20, 2019) [hereinafter “Def.’s Plea”].

⁵ Defendant was sentenced as follows: (1) For the Robbery Charge, twenty-five years at Level V, suspended after three years at Level V, followed by one year at Level III; and (2) For the PDWDCF charge, twenty-five years at Level V, suspended after three years at Level V, followed by one year at Level III. *See* Sentence: ASOP Order Signed and Filed 11/25/19, *State of Delaware v. Frank Pope*, Crim. ID No. 1905012766, D.I. 18 (Del. Super. Ct. Nov. 20, 2019). The Court sentenced Defendant’s probation to run concurrent to any probation he is currently serving. *Id.* On March 12, 2020, Defendant’s sentence was modified to include a \$200.00 restitution fee.

⁶ *See* Sentence: ASOP VOP Order Signed and Filed 11/25/19, *State of Delaware v. Frank Pope*, Crim. ID No. 1505018930, D.I. 52 (Del. Super. Ct. Nov. 20, 2019).

⁷ Defendant was sentenced as follows: (1) For Escape charge, eight years at Level V, suspended for six months at Level IV Work Release with no probation to follow; and (2) For the Drug Dealing charge, eight years at Level V, suspended for six months at Level IV Work Release with no probation to follow. *Id.* The Court sentenced Defendant’s probation to run concurrent to any probation he is currently serving. *Id.*

⁸ *See* Defendant’s Motion for Modification of Sentence, *State of Delaware v. Frank Pope*, Crim. ID No. 1905012766, D.I. (Del. Super. Ct. Mar. 26, 2020) [hereinafter “Def.’s Mot.”]; *see also* DEL. SUPER. CT. CRIM. R. 35(b).

his motion he asks the Court to modify his Level IV sentence. Generally, “[t]here is no separate procedure, other than that which is provided under Superior Court Criminal Rule 35, to reduce or modify a sentence.”⁹ The Court therefore considers this request under Superior Court Criminal Rule 35(b).

3. In his motion, Defendant requests the Court to modify his sentence from Level IV Work Release to Level IV Home Confinement.¹⁰ In support of his motion, Defendant states the following grounds for relief: (1) Defendant has been diagnosed with Schizophrenia and other mental health issues; (2) Defendant is on disability; (3) Defendant “can’t really work[;]” (4) Defendant “walked away from the work release due to absolutely no help for [his] mental health issues; and (5) Defendant is “better situated with Level IV Home Confinement.”¹¹ Defendant has accepted “full responsibility for [his] actions and feels “blessed to have another chance at life.”¹²

4. Under Superior Court Criminal Rule 35(b), “[t]he Court may . . . reduce the . . . term or conditions of partial confinement or probation, at any time.”¹³ Since Defendant is not seeking to modify or reduce his Level V sentence, but rather requests a modification of his Level IV sentence, he is not time-barred.

⁹ *Jones v. State*, 825 A.2d 238, 2003 WL 21210348, at *1 (Del. May 22, 2003) (TABLE).

¹⁰ Def.’s Mot. at page 1.

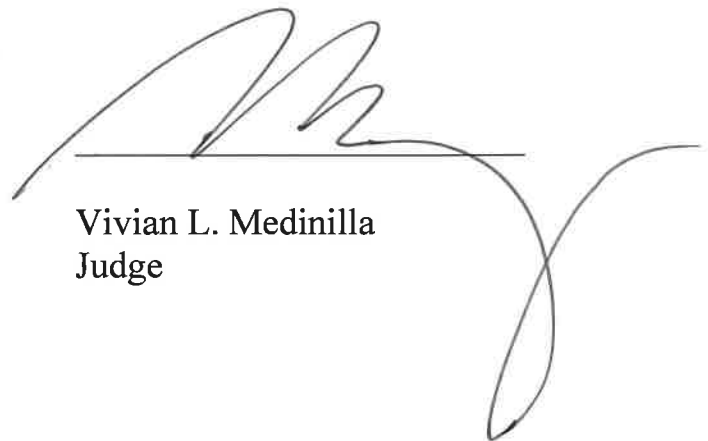
¹¹ *Id.* at pages 1-2.

¹² *Id.* at page 2.

¹³ DEL. SUPER. CT. CRIM. R. 35(b).

5. The Court recognizes that Defendant has struggled with adhering to his sentence in the past because of his mental health issues, where since 2016 Defendant has been found in violation of probation three times.¹⁴ For this reason, the Court defers to DOC to determine the appropriateness of Defendant's Level IV placement. The sentence is modified to six months at Level IV DOC Discretion, whereby DOC may determine the appropriate placement. The remainder of Defendant's sentence is appropriate for all the reasons stated at the time of sentencing.

IT IS SO ORDERED that Defendant's Motion for Modification of Sentence is **GRANTED**, in part, and **DENIED**, in part.



Vivian L. Medinilla
Judge

oc: Prothonotary
cc: Defendant
Department of Justice
Investigative Services

¹⁴ See Violation of Probation Hearing: Defendant Found in Violation, *State of Delaware v. Frank Pope*, Crim. ID No. 1505018930, D.I. 18 (Del. Super. Ct. Aug. 1, 2017); see also Violation of Probation Hearing: Defendant Found in Violation, *State of Delaware v. Frank Pope*, Crim. ID No. 1505018930, D.I. 31 (Del. Super. Ct. Apr. 10, 2018); see also Sentence: ASOP VOP Order Signed and Filed 11/25/19, *State of Delaware v. Frank Pope*, Crim. ID No. 1505018930, D.I. 42 (Del. Super. Ct. Nov. 20, 2019).